



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 2, 1993

Ms. Melissa Winblood
Assistant City Attorney
Office of the City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

OR93-077

Dear Ms. Winblood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17044.

The El Paso Police Department (the "department") has received two requests for certain investigative records, including the police incident reports, that involve endangerment to a child. You claim that the requested records are excepted from required public disclosure by section 3(a)(1) in conjunction with section 34.08 of the Family Code, or by section 3(a)(8) of the Open Records Act (the "act").

We turn first to section 3(a)(1).¹ Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 34.08(a) of the Family Code provides:

Except as provided in Subsections (b) and (c) of this section, the reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.¹

We understand there are no departmental regulations authorizing the disclosure of chapter 34 investigation information.

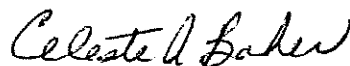
¹Subsections (b) and (c) provide for review of investigation information by an adoptive or prospective adoptive parent of a child and by an adult who as a child was the subject of a chapter 34 investigation. Neither subsection is applicable here; nor do the state regulatory provisions authorize release of the departmental reports. See 40 T.A.C. §§ 49.501-17.

In Open Records Decision No. 587 (1991) (copy enclosed), this office concluded that section 34.08 of the Family Code protected law enforcement as well as privacy interests, and that therefore, section 3B of the Open Records Act did not operate to give a special right of access to any individual to information within the protection of section 34.08. *Id.* at 3-4 (also noting that section 3B gives certain persons a right to information withheld solely on the basis of privacy).² You indicate that the department's child abuse investigation was conducted in accordance with chapter 34. Consequently, neither requestor has a special right of access to the child abuse investigation information at issue here. To assist you in responding to the requests, we have marked those portions of the investigative records that you must withhold pursuant to section 34.08 of the Family Code.

The remaining information concerns a complaint that has been dismissed. You assert that section 3(a)(8) protects this information, but you have not established that its release will "unduly interfere" with law enforcement. *See* Open Records Decision No. 434 (1986) (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Thus, this information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-077.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/lmm

Ref.: ID#s 17044, 17048
ID#s 17413, 17452

Enclosure: Submitted documents
Open Records Decision No. 587

²In Open Records Letter OR91-443, this office ordered the release of an incident report involving the sexual assault of a minor by another minor to the victim's parent under section 3B of the act. We found no indication in our files that this 1991 letter ruling involved the release of chapter 34 investigation information. *See also* 40 T.A.C. § 49.503(6) (certain reports of children harming other children are not chapter 34 reports).

cc: Mr. Jeffrey B. Hatcher
260 Lee Road 941
Smiths, Alabama 36877
(w/o enclosures)

Mr. Antonio Briseño
528 Center Way, Apt. 6
El Paso, Texas 79915
(w/o enclosures)